

5

The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Criminal Miscellaneous Application No. 20 of 2022

10

(Arising from Court Case No. CRC No. 014/2020)

Ingurat Isaac Applicant/Accused

Versus

15

Uganda Respondent/Prosecution

Before: Hon. Justice Dr. Henry Peter Adonyo

Ruling

1. Background:

20

The Applicant was indicted for the offence of aggravated defilement c/s 129 (3) (4) (a) of the Penal Code Act. It is alleged that on the 8th day of August, 2020, at Akeru village in Bukedea District, the applicant defiled a one Iyamet Dinah, a girl aged 11 then.

25

The Applicant was committed for trial in the High Court of Uganda at Soroti in August, 2020 by the Chief Magistrate’s Court of Kumi at Kumi.

5 The case is yet to be fixed for hearing hence this application by which the applicant seeks to be released on bail pending trial.

2. Legal basis of the Application:

10 The application is by notice of motion under **Articles 2(1), 23(6)(a) and 28 (1) (3) of the Constitution of the Republic of Uganda, 1995 Sections 14 and 15(1)(b)(c) of the Trial on Indictments Act Cap 23, and Rules 2 and 4 of the Judicature (Criminal Procedure) (Application) Rules S.I. 13-8** for orders that the applicant, Ingurat Isaac, currently on remand at Soroti Prison be released on bail pending the hearing and determination of the criminal case against him.

15 The main grounds of this application as stated in the notice of motion and supporting affidavit are that;

- It is the Applicant's constitutional right to be released on bail at the discretion of this Honorable court.
- The Applicant is mentally retarded as his mental status is unstable which requires treatment from a psychiatric clinic.
- The Applicant has a permanent place of abode within the jurisdiction of this Honorable Court and will not abscond from attending Court if released on bail.
- The Applicant has substantial sureties to stand for him and will abide by the conditions this Court may set.
- The Applicant has no negative antecedents whatsoever and there are no other charges pending against the accused.
- That it is just and equitable that the Applicant be released on bail.



5 The application is dated 12th July, 2022 and it is supported by the Applicant's affidavit sworn of the same day.

The summary of the affidavit in support of this application is as follows;

- 10 - In paragraph 2, the applicant states that he was charged with the offence of aggravated defilement contrary to **section 129(3)(4)(a) of the Penal Code Act, Cap 120.**
- In paragraph 3, the applicant states that he has been in custody since 8th August, 2020 when he was arrested and detained in police custody at Bukedea Central Police Station.
- 15 - That later, as stated in paragraph 4, in the same month of August, 2020, he was remanded to Kumi Government Prison by the Chief Magistrate's Court of Kumi at Kumi and then transferred to Soroti Government Prison.
- In paragraph 5, the applicant states that although he was committed for trial in the High Court, it is not known when the trial will take place.
- 20 - In paragraph 6, the applicant states that his stay in custody is for a period which is uncertain / unclear.
- The applicant deposes in paragraph 7 and 8 that he is presumed innocent until proven guilty and that he has a right to apply for bail.
- 25 - The applicant states in paragraph 9 and 10 that he will not interfere with the state witnesses and that he does not even know the witnesses that the state intends to produce and rely on.
- Further, the applicant states in paragraph 11 that he is mentally retarded as his mental status is unstable which requires treatment from a psychiatric clinic as per the attached and annexed copy of the
- 30

5 medical report from Soroti Prisons Health Centre III marked as annexure "B".

- The applicant states in paragraph 12 that he has a fixed place of abode at Okichira village, Okichira parish, Bukedea sub county, Bukedea district within the jurisdiction of the Honourable Court as per the annexure marked "C" and "D" – LC1 introductory letter and National Identity Card.
- The applicant states in paragraph 13 that he has two substantial sureties.
- The applicant states in paragraphs 14 and 15 that he is a law-abiding citizen, ready and willing to abide by the bail conditions set by the court and that he will attend his trial when Court commands so.

20 The respondent did not file an affidavit in reply to this application in spite of the urging by court for it to do so in addition to the affidavit of service dated 5th October, 2022 which indicate that the application had been received by the Resident State Attorney – Soroti evidencing that this application was received but not responded to.

Accordingly, this Honourable Court will consider the merit of applicant's application while determining this application.

3. Submissions:

25 Since the Respondent did not file any affidavit in reply, this application apparently is unopposed, meaning that there is no objection to it and of the sureties presented in court or their documents or any of the grounds relied upon by the applicant.

5 In arguing this application, the applicant through his counsel filed a written submission through his counsel. The submission along with the application itself, the affidavit in its support, the annexed documents, the relevant legal authorities and the laws applicable are taken into account while determining this application.

10 In his argument, Counsel for the Applicant reiterated the grounds stated in the motion and supporting affidavit above. They are not reproduced again here.

Counsel further presented for the applicant 2 (two) persons as sureties in order to support this application. They are;

15 a. Emong Peter James, 65 years old, a resident of Okichira village, Okichira parish, Bukedea sub-county, Bukedea district, a peasant farmer, the applicant's biological father, Tel. No. 0778256693, holding a voter's card personal ID No. CM57079101KUED and having a letter of the area LC1 dated 18th May, 2022 as per the photocopies attached and marked as annexures "E" and "F".

20 b. The second surety is Apolot Anna Margaret aged 56 years old, a resident of Okichira village, Okichira parish, Bukedea Sub-county, Bukedea district, a peasant farmer, the applicant's biological mother, Tel. No. 0770955758, holding a voter's card personal ID No. CF66079101kera, and having a letter of the area LC1 dated 18th May, 25 as per the photocopies attached and marked as annexures "G" and "H".

The two above named persons are identified as the biological parents of the applicant and are residents within the jurisdiction of this Honourable Court.

30 It is also contended that these two had been explained to their roles and



5 duties of sureties, which they are stated to have understood and that had undertaken to ensure complete compliance by the applicant of any bail terms and conditions set by this Honourable Court.

Counsel for the applicant further submitted that the court should take into account the overriding consideration in an application of this nature which
10 is whether the applicant will turn up for his trial and that in respect of this position, the applicant had concretely displayed that will by proving that he had fixed place of abode at Okichira village, Okichira parish, Bukedea Sub-county, Bukedea district which is within the jurisdiction of this Honourable Court.

15 Counsel also submitted that in considering bail, the court should take into account the presumption of innocence which is derived from the Constitution of the Republic of Uganda, 1995, As Amended which was elucidated in *Uganda vs Rtd. Col. Dr. Kiiza Besigye Constitutional Reference No. 20 of 2005*.

20 4. Determination of this application:

The basic principle for which a court may release an applicant on bail is the presumption of innocence. This legal principle is enshrined under **Article 28(3) (a) Constitution of the Republic of Uganda, 1995**.

As has already been noted earlier, this Application was brought under
25 **Article 23(6) (a) of the Constitution of the Republic of Uganda** which provides;

“...where a person is arrested in respect of a Criminal Offence, he is entitled to apply to the Court to be released on bail and Court may grant that person bail on such conditions as Court considers reasonable.”

30

5

Further, **Article 28 (3) (a)** of the Constitution of the Republic of Uganda provides that,

‘...every person who is charged with a criminal offence shall be presumed innocent until proved guilty or until that person has pleaded guilty...’

10

This position is clarified by **Section 14** of the Trial on Indictment Act which states;

“...a court may at any stage of the proceedings release the accused person on bail, on taking from him or her a recognizance consisting of a bond with or without sureties, for such an amount as is reasonable in the circumstances of the case, to appear before the Court on such a date and at such a time as is named in the bond...”

15

20 **The Constitution (Bail Guidelines for Courts of Judicature) Practice) Directions, 2022, No. 5** reinforces the above legal positions by providing the general principles which a court may take into account while considering a bail application while being guided by relevant principles as enshrined in the Constitution of Uganda. These principles are;

- 25 a) The right of an applicant to be presumed innocent as provided for in article 28(3) of the Constitution;
- b) The applicant’s right to liberty as provided for in article 23 of the Constitution;
- c) The applicant’s obligation to attend trial;
- 30 d) The discretion of the court of the court to grant bail on such terms and conditions as the court considers reasonable; and



5 e) The need to balance the rights of the applicant and the interest of justice.

Arising from all the above consideration, it is, therefore, trite to conclude that while an accused person **has the right to apply for bail** by virtue of **Article 23 (6) (a) and 23 (3) of the Constitution of the Republic of Uganda**, the court has the **singular unfettered discretionary powers** to grant the same as was held in *Uganda v Kiiza Besigye; Constitutional Reference No. 20 of 2005*.

15 Additionally, and pursuant to **Sections 14 and 15 of the Trial on Indictments Act**, a person indicted of a serious offence can be stated to only be able to be released on bail if he or she proves to the satisfaction of the court that special circumstances do exist to warrant his or her being released on bail. These circumstances which are regarded “**special**” include grave sickness, infancy or old age, the fact that the applicant has been on remand for over 12 months before committal for trial as per **Article 23(6)(c) of the Constitution** and that the state does not oppose the applicant being released on bail.

Proof of these circumstances nonetheless is not mandatory as the courts have the discretion to grant bail even where none is proved.

25 In addition, these special circumstances are no longer regarded as a required for release of an accused person charged with a capital offence to be released on bail for **Section 15 (1) (a) of the Trial on Indictment Act**, which provides for these special circumstances was held to be in contravention of the constitutional right to apply for bail.

30 See: *Foundation for Human Rights Initiative vs. Attorney General, Constitutional Petition 20/2006*.

5 Besides under **Article 28(3) of the Constitution of the Republic of Uganda**, every person is presumed innocent until proved guilty or pleads guilty.

Consequently, an accused person should not be kept on remand unnecessarily without trial and must also not be deprived of his/her freedom
10 unnecessarily or denied bail as a punishment where he or she has not yet been proved guilty by a competent court of law.

See: *Tumwirukirire Grace v Uganda; Miscellaneous Criminal Application 94 of 20190 [2020]*

The principle of protection of personal liberty was concreted in the case of
15 **Col (Rtd) Dr. Kiiza Besigye v Uganda Criminal Application No.83 of 2016** wherein Masalu Musene, J held that;

20 *“...court has to consider and balance the rights of the individual, particularly with regard personal liberty...The active principle in granting bail is that of upholding the liberty of the individual, while simultaneously protecting the administration of justice.”*

See: *Abindi & Another v Uganda; Miscellaneous Criminal Application 20 of 2016 [2017]*

25 Accordingly, an accused person should be granted bail if he or she fulfills the set conditions for his/her release, has a fixed place of abode, has sound sureties capable of guaranteeing that he will comply with the conditions of his or her bail and is willing to abide by all other conditions set by the court.

5 However, in all cases the court must have in its mind the overarching consideration of the gravity of the accusation levelled against an applicant and that should never be ignored.

In respect of this application, the Applicant stands charged with the offence of aggravated defilement. Counsel for the applicant contends that there were
10 exceptional circumstances relating to this case in that the applicant was of unstable mental status which require treatment at a psychiatric clinic outside prison facilities as proven by the medical report from Soroti Prisons Health Centre III attached to his affidavit.

This Honourable Court further notes that the applicant has shown that he
15 has a fixed place of abode within the jurisdiction of this court and he is more likely than not going to abscond his trial when released on bail. This he has done so by providing an introductory letter from the local government authorities of Local Council 1 of Okichira Parish, Bukedea sub-county in Bukedea district where he is stated to reside. He has also presented his
20 national identity card, which is a government document and it is attached to his affidavit which document provides for certain his identification in tangible details.

Furthermore, this Honourable Court is also aware that a hearing date for the offence for which the applicant is charged with is yet to be fixed which is an
25 indication that there is a high probability of a delay to be experienced before the applicant/accused can be tried.

In the case of ***Foundation for Human Rights Initiative vs. Attorney General Constitutional Petition No. 020 of 2006***, it was held that the nature of the offence, antecedents of the applicant and the fact of whether an

5 applicant has a fixed place of abode in court's jurisdiction should be strongly considered by court in an application for bail.

Since there is no objection as to the sureties, the applicant has fixed place of abode nor to the antecedents of the applicant, I would conclude that all these requirements are not in dispute.

10 In ***Uganda vs Col. RTD Dr Kiiza Besigye Constitutional Reference No. 20 of 2005***, it was held that the court should while considering a bail application balance the constitutional right of an applicant and the need to protect society from lawlessness.

I would find that since the applicant has presented substantial sureties who
15 are his biological parents and has indicated that he has a fixed place of abode within the court's jurisdiction, among other reasons stated above, then my conclusion is that sound merit has been shown in respect to this application.

Accordingly, I application for bail would be granted on the following conditions.

20 a. Precondition to grant of bail:

As a pre-condition before the applicant can enjoy any of the bail terms set below, it is hereby ordered that the Officer in Charge of Soroti Central Police Station together with the Chief State Attorney, Soroti and the applicant's counsel do conduct a joint visit to the applicant's stated place of residence to
25 ascertain its presence and location and submit a detailed report including a map to the registrar of this court, which detailed report shall part of the record.

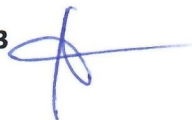


5 b. Bail Terms:

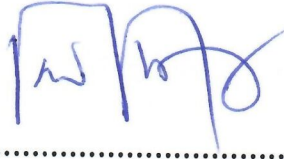
Upon the fulfilment of (a) above, the Applicant shall be released on bail on the following terms;

- i. By taking from the Applicant, a recognizance consisting of Uganda Shillings One Million only (UGX1,000,000) CASH.
- 10 ii. The Applicant to present his original national identity card together with its two certified copies, one copy of which shall be kept in this file by the Registrar of this court and the other kept by the Chief Resident State Attorney, on behalf of the respondent.
- iii. The Applicant shall also deposit on record two (2) recently taken (black
15 and white) passport size photos (One to be attached to this file and the other kept by the Chief Resident State Attorney).
- iv. The Applicant to report to the Registrar of this Court, in person, once every month commencing on 4th February, 2023.
- v. Each of the approved sureties, herein, that is Mr. Emong Peter James
20 – The Father and Ms. Apolot Anna Margaret – The Mother shall each deposit on record two (2) recently taken (black and white) passport size photos (One to be attached to this file and the other kept by the Chief Resident State Attorney) and shall in addition sign a non-cash bond of Uganda Shillings Five Million only (UGX. 5,000,000/=).
- 25 vi. Any failure to adhere to these conditions shall lapse the bail terms above resulting into an automatic issue of a Warrant of Arrest against the Applicant and the cancellation of his bail in addition to the sureties to both being required to pay to the state the non-cash bond of Uganda Shillings Five Million only (UGX. 5,000,000/=) above.

30



5 I so order accordingly at the Soroti High Court Circuit, this 4th day of
January, 2023

A handwritten signature in blue ink, appearing to be 'H.P. Adonyo', written over a dotted line.

10

Hon. Justice Dr. Henry Peter Adonyo

Judge

4th January, 2023